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FM AMEMBASSY TASHKENT  
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INFO RUEHAAH/AMEMBASSY ASHGABAT 3445  
RUEHTA/AMEMBASSY ASTANA 9655  
RUEHRL/AMEMBASSY BERLIN 1210  
RUEHEK/AMEMBASSY BISHKEK 4061  
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C O N F I D E N T I A L SECTION 01 OF 02 TASHKENT 001952

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E.O. 12958: DECL: 11/09/2017

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SUBJECT: GERMAN LEGAL EXPERT OFFERS JUDICIAL REFORM PROJECT  
ADVICE

Classified By: Poloff Tim Buckley for reasons 1.4 (B, D)

¶1. (C) Summary. Poloff met on November 7 with Klaus Schmitz, outgoing legal expert from the German Association for Technical Cooperation (GTZ), which is completing a two year EU-funded rule of law project in Uzbekistan. The project achieved some positive results, especially in providing business law training to judges and developing curriculum materials, but Schmitz reported the GOU "kept us at arm's length." The project, which began in the aftermath of the May 2005 Andijon events with a reduced scope, was seen as a way for the EU to maintain some engagement with the GOU. Schmitz said his project could have accomplished much more if they had "sustained institutional contact" with relevant ministries, but noted it was very difficult to operate as a foreign advisor during this timeframe. Schmitz suggested there may be an opportunity to pursue capacity-building projects that focus on habeas corpus, international arbitration law, and corporate registration issues. Anti-TIP and counter-narcotics programs also may be possible. End summary.

Background

¶2. (C) GTZ is a quasi-governmental German development agency that is affiliated with the Ministry for Development Cooperation. GTZ was selected in a competitive process to administer the two-year project with EU funds, with a focus on developing business law by training judicial staff and developing curriculum. Schmitz reported that there was debate within the EU in the aftermath of the Andijon tragedy about whether to proceed with the project, but ultimately the project went forward as an effort to maintain some engagement with the GOU.

Kept at Arm's Length

¶3. (C) Schmitz said the main GOU contact was the Republican Legal Training Center (RLTC), an entity which trains judges and prosecutors under the auspices of the Ministry of Justice (MOJ). Schmitz (please strictly protect) noted the RLTC "seems to have a political head" rather than professional leadership, and links with foreigners were carefully limited.

GTZ was also directed to work with the Ministry of Foreign Economic Relations, however it did not have the capacity to deal with the issue. Although GTZ carried out regular seminars on legal reform, it was difficult to access judges to provide training. He was cautioned by diplomats at the outset that "MOJ was more of an enforcement agency in the country than a legal reform partner," which limits the effectiveness of rule of law projects.

#### Some Success

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¶ 4. (C) The most successful elements of the GTZ project were those that focused on younger judges who were more willing to learn new concepts such as case law. Schmitz also had success working with Westminster University in Tashkent on developing law curriculums. They recently worked with the MFA to organize a two-day seminar for Uzbek diplomats to learn about EU law, which finally was approved after lengthy consideration. MFA also requested training in Europe for Uzbek interpreters to gain familiarity with legal terminology and concepts, although they requested long periods of expenses-paid training in Europe and asked for expensive computers and other equipment.

#### Opportunity on Habeas Corpus

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¶ 5. (C) Schmitz said the RLTC suggested that the GOU would welcome some training programs on habeas corpus, particularly since a new law has been adopted and will soon enter into force. Schmitz believes "many levels of cooperation are possible" on habeas corpus, including pointing out

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deficiencies in the law as well as how to apply it properly. He cautioned that the Uzbeks feel the new habeas corpus law is advanced and thus they may be sensitive to criticisms about shortcomings in the legislation, but there is an opportunity if it is framed properly.

#### Enhancing Arbitration Law

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¶ 6. (C) GTZ had some success on arbitration issues and Schmitz feels that more work in this area is possible. He noted that because the court system is so slow and disputes have to get resolved, Uzbeks already do a lot of informal arbitration and their culture fits well with the concept. He particularly recommended working outside of the capital on arbitration issues, and described a successful seminar conducted in Samarcand. He added that a strong domestic arbitration system strengthens the court system by keeping resolvable cases from contributing to backlogs, thereby allowing judges to focus on more complex cases. While the GOU is amenable to domestic arbitration assistance, Schmitz noted it is more lukewarm on international arbitration since decisions can go against Uzbek interests. A draft international arbitration law has been with the Cabinet of Ministers for two years, but Schmitz noted that drafting advice is sorely needed to improve its content. (Comment: The GOU has a mixed record, at best, in respecting and enforcing international arbitration decisions. End comment.)

#### Other Possible Areas

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¶ 7. (C) Schmitz also mentioned corporate registration as a priority area for Uzbekistan, although GTZ "was not able to get a foot in the door" during its project timeframe. He also said that he thought judicial reform and training with an anti-TIP or anti-narcotics focus could be successful in Uzbekistan if the GOU is indeed showing signs of reengagement.

Comment

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¶8. (C) Schmitz was one of few remaining expatriates working on legal reform in Tashkent, and his departure comes at a time when EU countries and the US are seeing some positive signs from the GOU on willingness to engage. There are some remaining INL funds from a 2003 judicial reform account that could be used to propose assistance programs which enhance rule of law capacity in Uzbekistan. We will continue to explore with Washington the possibility of using an NGO such as ABA/CEELI to work with the GOU on implementing habeas corpus, as well as the idea of restoring the position of a Resident Legal Advisor in Tashkent if it appears that a legal expert could engage productively with the GOU on these issues.

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